

AO 399 (01/09) Waiver of the Service of Summons

## UNITED STATES DISTRICT COURT

for the  
District of Utah - Central Division

2012 APR 24 P 1:53

DISTRICT OF UTAH

Walter L. Wagner*Plaintiff*

v.

World Botanical Gardens, Inc. et al.*Defendant*

Civil Action No. 2:11-cv-784-CW-PMW

## WAIVER OF THE SERVICE OF SUMMONS

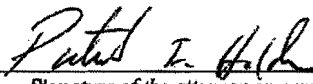
To: Walter L. Wagner*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/06/2012, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 04/24/2012*Signature of the attorney or unrepresented party*Leslie Cobos*Printed name of party waiving service of summons*Patrick F. Holden*Printed name*901 West Baxter Drive  
South Jordan, Utah 84095*Address*pholden@richerandoverholt.com*E-mail address*(801) 561-4750*Telephone number*

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

**RICHER & OVERHOLT**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
901 WEST BAXTER DRIVE  
SOUTH JORDAN, UTAH 84095

ARNOLD RICHER  
DARCI D. TOLBERT<sup>1</sup>  
PATRICK F. HOLDEN  
OF COUNSEL  
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SHANE W. NORRIS<sup>2</sup>  
ROBERT A. PONTE  
<sup>1</sup> ALSO ADMITTED IN VIRGINIA  
<sup>2</sup> ALSO ADMITTED IN NEVADA

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April 24, 2012

Walter L. Wagner  
532 N 700 E  
Payson, Utah 84651

Re: *Wagner v. World Botanical Gardens, Inc. et al.*  
Case No. 2:11-cv-784-CW-PMW

Dear Mr. Wagner:

Enclosed please find the following documents: (1) Waiver of the Service of Summons - Annette Emerson; (2) Waiver of the Service of Summons - Kenneth Francik; and (3) Waiver of Service of Summons - Leslie Cobos.

Sincerely,

**RICHER & OVERHOLT, P.C.**



Patrick F. Holden

Enclosures

WBGI 03

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2012 APR 24 P 1:53

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Walter L. Wagner

Plaintiff

v.

World Botanical Gardens, Inc. et al.

Defendant

BY: \_\_\_\_\_  
Civil Action No. 2:11-cv-784-CW-PMW

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(Name of the plaintiff's attorney or unrepresented plaintiff)

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I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 03/28/2012, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 04/24/2012

Patrick F. Holden  
Signature of the attorney or unrepresented party

Kenneth Francik

Printed name of party waiving service of summons

Patrick F. Holden

Printed name

901 West Baxter Drive  
South Jordan, Utah 84095

Address

pholden@richerandoverholt.com

E-mail address

(801) 561-4750

Telephone number

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Enclosures

WBG/03

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901 West Baxter Drive  
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*Address*pholden@richerandoverholt.com*E-mail address*(801) 561-4750*Telephone number*

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